

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Glenn Brown	Team: APU	CCRB Case #: 201411804	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 11/20/2014 7:50 PM	Location of Incident: Myrtle Avenue-Broadway JMZ Subway Station	Precinct: 83	18 Mo. SOL 5/20/2016	EO SOL 5/20/2016	
Date/Time CV Reported Fri, 11/21/2014 11:43 AM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 11/21/2014 11:43 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Evans Mazile	09374	948491	TB DT33
2. SGT Richard Siedman	03953	942841	PSA 3

Officer(s)	Allegation	Investigator Recommendation
A.POM Evans Mazile	Force: PO Evans Mazile used pepper spray against § 87(2)(b) [REDACTED]	
B.POM Evans Mazile	Force: PO Evans Mazile struck § 87(2)(b) [REDACTED] with an asp.	
C.SGT Richard Siedman	Abuse: Sgt. Richard Siedman threatened § 87(2)(b) [REDACTED] with the use of force.	

Case Summary

On November 20, 2014, at approximately 7:50 pm, PO Evans Mazile of Transit District 33 stopped § 87(2)(b) and his girlfriend § 87(2)(b) inside the Myrtle-Broadway JMZ subway station in Brooklyn for theft of services. When § 87(2)(b) stated that he did not have his identification, PO Mazile attempted to place him into handcuffs, and § 87(2)(b) refused to give PO Mazile his hands. PO Mazile pepper-sprayed § 87(2)(b) and then struck him once in the leg and once in the head with his baton (**Allegations A and B**). Additional units responded to the station in order to assist. Sgt. Richard Siedman of PSA 3 told § 87(2)(b) “Let go right now or I’m going to Tase you,” (**Allegation C**). § 87(2)(b) was arrested and charged with § 87(2)(b).

§ 87(2)(b) and § 87(2)(b), § 87(2)(a) Fam. Ct. Act § 381.3
[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
The latter portion of the incident was captured by numerous unidentified bystanders and was covered by numerous news media outlets (see Video and Board Review 02 and 03). This case was on DA Hold from November 24, 2014 until May 19, 2015.

Mediation, Notice of Claim, and Criminal Histories

This case was not suitable for mediation. § 87(2)(b) filed a Notice of Claim with the City in which he claimed, among other things, personal, emotional, and physical injury, false arrest, negligence, and malicious prosecution. § 87(2)(b) is seeking \$3,000,000 as redress (see Board Review 04). [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (see Board Review 06).
- This is the first CCRB complaint to involve § 87(2)(b) (see Board Review 07).
- PO Mazile has been a member of service for five years and there are no substantiated allegations against him.
- Sgt. Siedman has been a member of service for 12 years and this is the first CCRB complaint against him.

Potential Issues

The complainant/ witness in the case, § 87(2)(b) and a 911 caller, § 87(2)(b) were uncooperative with the required agency attempts to obtain a sworn statement regarding the incident (though both of them provided brief phone statements). § 87(2)(b) was unavailable and § 87(2)(b)'s civil attorney, § 87(2)(b), offered the CCRB the opportunity to sit in on § 87(2)(b)'s 50h hearing, but declined to have him provide a statement directly to the CCRB. § 87(2)(b) was also unavailable (see Board Review 08). [§ 87(2)(g)]

Findings and Recommendations

- **Allegation A) Force: PO Evans Mazile used pepper spray against § 87(2)(b)**
It is undisputed that PO Mazile pepper-sprayed § 87(2)(b) (see NYPD Documents 01 and 02). § 87(2)(b)'s pepper-spraying was not captured on video (see Video and Board Review 02). PO Mazile explained that after he instructed § 87(2)(b) to stand up and place his hands behind his back, § 87(2)(b) at first complied by standing up, turning his back to PO Mazile and

then placing his hands behind his back. When PO Mazile grabbed § 87(2)(b)'s hands, § 87(2)(b) brought them around to the front of his body, near his midsection, and leaned over. Even though PO Mazile did not suspect § 87(2)(b) was armed, § 87(2)(b) was wearing a hooded sweatshirt with a pouch in front and PO Mazile did not know what § 87(2)(b) might have had inside of this pouch, which was in the general area of where § 87(2)(b) brought his hands, and PO Mazile could not see if § 87(2)(b) was reaching for something. PO Mazile took out his pepper-spray and instructed § 87(2)(b) to place his hands behind his back or else he would be pepper-sprayed. § 87(2)(b) briefly brought his hands behind his back, PO Mazile put his pepper-spray away, but when he grabbed § 87(2)(b)'s hands, § 87(2)(b) brought his hands back in front of his body near his sweatshirt's pouch. PO Mazile removed his pepper-spray, brought it around the left side of § 87(2)(b)'s face and discharged his pepper-spray. § 87(2)(b) quickly turned his head so that the stream hit the side and rear of his head, which kept it out of his eyes. PO Mazile discharged his pepper-spray instead of grabbing § 87(2)(b)'s hands because he felt that it was safer, particularly because he did not know what § 87(2)(b) might have been reaching for in the pouch, and he could have cut PO Mazile.

Patrol Guide Procedure 212-95 allows officers to discharge pepper-spray on individuals who are actively resisting arrest. The Procedure notes that pepper-spray will reduce or eliminate the need to use "substantial physical force" in order to make an arrest and should not be used in situations that do not require the use of physical force. Patrol Guide Procedure 203-11 affords officers the minimum necessary force to make an arrest (see Board Review 09).

§ 87(2)(g)

• **Allegation B) Force: PO Evans Mazile struck § 87(2)(b) with an asp.**

It is undisputed that PO Mazile struck § 87(2)(b) once in the left leg with his asp and then again directly on top of his head, resulting in substantial bleeding and a laceration that required three sutures to close (see NYPD Documents 02).

The video recording of the incident begins with § 87(2)(b) standing on top of a bench in the subway station and PO Mazile striking him once on the leg with a baton swing akin to the swing of a baseball bat. § 87(2)(b) crouches down on the bench at the same time that PO Mazile brought his baton back and took an overheard swing downward in a chopping motion. § 87(2)(b) had one foot on the ground when PO Mazile struck him once on the top of the head (see Video and Board Review 02).

PO Mazile stated that he drew his asp because he had dropped his pepper-spray and radio (thus eliminating the possibility of placing a call for back-up) and because § 87(2)(b) was resisting arrest and attempting to flee. PO Mazile struck § 87(2)(b) once in the leg and felt that it had no effect so he swung again at § 87(2)(b) intending to hit him in the same place. § 87(2)(b) stepped off of the bench, changing his position relative to PO Mazile's baton and PO Mazile struck § 87(2)(b)'s head and not his leg. PO Mazile did not suspect that § 87(2)(b) was armed and PO Mazile did not recall § 87(2)(b) attempting to punch or strike him.

Patrol Guide Procedure 203-11 affords officers the minimum necessary force to make an arrest. The Police Student's Guide section regarding the Use of Force and Impact Techniques states that striking certain parts of the body, including the head, with a baton may result in serious

physical injury or death to the person struck. Officers should, whenever possible, strive to strike extremities and larger muscle groups, such as the torso.

§ 87(2)(g)

• **Allegation C) Abuse of Authority: Sgt. Richard Siedman threatened § 87(2)(b) with the use of force.**

It is undisputed that Sgt. Siedman told § 87(2)(b) “Let go right now or I’m gonna Tase you.” It is also undisputed that Sgt. Siedman never drew his Taser.

The video recording of the incident clearly showed that § 87(2)(b) and § 87(2)(b) were covered in blood and that a vocal crowd had formed around the officers. Within 13 seconds of Sgt. Siedman making this remark, § 87(2)(b) was in handcuffs, though it is not clear in the video when § 87(2)(b) finally brought his hand behind his back.

Sgt. Siedman stated that he made this remark (or one like it) because § 87(2)(b) was actively resisting arrest and there was already a great deal of blood on him. At the time of this remark, Sgt. Siedman did not know who was injured. Sgt. Siedman also noted that a crowd had formed.

Patrol Guide Procedure 212-117 states that officers may employ a Taser in order to overcome resistance from a suspect. The Procedure outlines a number of factors to consider when employing a Taser, including: the suspect’s willingness to resist, the suspect’s violent history, and if the officer is in a hostile environment (see Board Review 09).

§ 87(2)(g)

Pod: 11

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date